

GAHC010050022024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./724/2024

JAHUL KHAN AND 2 ORS
S/O MD. IBRAHIM KHAN, R/O SAIMIRBAS, P.S.-FIROZPUR JHIRKI, DIST-
NUHU MEWAK, HARYANA

2: MD. ASLAM HUSSAIN
S/O EDU HUSSAIN
R/O ALWARA ALAUDA
P.S.-RAMGARH
DIST-ALWAR
RAJASTHAN

3: MAGRAB ALI
S/O MOIJUDDIN
R/O GOROIMARI PATHAR
P.S.-BARPETA
DIST-BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. A. MEDHI

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

03.04.2024

- 1.** Heard Ms. A. Medhi, learned counsel for the petitioners. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam.
- 2.** This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1) Jahul Khan, (2) Md. Aslam Hussain and (3) Magrab Ali, who are detained behind the bars since 04.02.2024 in connection with Tezpur P.S. Case No. 53/2024, under Section 457/380 of the Indian Penal Code corresponding to G.R. Case No. 97/2024.
- 3.** The petitioner Nos. 1 and 2 were arrested on 04.02.2024 and they have completed 60 days of detention and petitioner No. 3, Magrab Ali, was arrested on 13.02.2024 and he has completed 51 days of detention.
- 4.** The accusation in this case is that on 04.02.2024, one Santumoni Bharadwaj, had lodged an FIR(First Information Report) before the In-Charge of Borghat Police Outpost, *inter-alia*, alleging that on the night of 03.02.2024, some unknown miscreants had broken the shutter lock of SBI ATM Booth at Tinimile and have stolen away a cash amount of Rs. 32,30,300/-.
- 5.** Learned counsel for the petitioners has submitted that the petitioners are in no way involved in the offence which has been alleged in the FIR.
- 6.** It is also submitted by the learned counsel for the petitioner that the petitioner Nos. 1 and 2 have already completed maximum period of detention for which they can be detained behind the bars under Section 167 of the Code of Criminal Procedure, 1973 whereas, the petitioner No. 3 has completed 51 days of detention.

7. Hence, considering the period of detention, he has prayed for allowing the petitioners to go on bail.

8. On the other hand, learned Additional Public Prosecutor has submitted that from the petitioners instruments and tools which may be used in cutting ATM machines were recovered on 04.02.2024 like oxygen cylinder, gas cylinder, regulator etc. and investigation has not yet been completed.

9. I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record carefully.

10. Since the instant case has been registered under Section 457/380 of the Indian Penal Code for which the maximum period of detention under Section 167 of the Code of Criminal Procedure, 1973 within which petitioners may be detained is 60 days only and petitioner Nos. 1 and 2 have already completed the said period as well as also considering the fact that petitioner No. 3 has been detained for a considerably long period, 51 days, his custodial detention may also be not necessary if he co-operates in the investigation.

11. For the reasons mentioned hereinabove, all the above named three petitioners are hereby allowed to go on bail of Rs. 30,000/- each with a suitable surety of like amount, who should be a permanent resident of State of Assam, subject to the satisfaction of the learned Chief Judicial Magistrate, Tezpur, with following conditions that:-

- (i) the petitioner shall not directly or indirectly make any inducement, threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court; and
- (ii) the petitioner shall co-operate in the investigation.

12. With the above observations, this bail application is hereby disposed of.

13. Send back the case diary.

JUDGE

Comparing Assistant